

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | Facility ID No. 9842 |
| WUAW-88.3 FM |) | NAL/Acct. No. MB20041810079 |
| |) | FRN: 0009693185 |
| Licensee of Station WUAW(FM) |) | File No. BRED-20031007AAJ |
| Erwin, North Carolina |) | |

FORFEITURE ORDER

Adopted: June 13, 2008

Released: June 16, 2008

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500), to WUAW-88.3 FM (“Licensee”), licensee of Station WUAW(FM), Erwin, North Carolina (“Station”), for its willful and repeated violation of Section 73.3539 of the Commission’s Rules (“Rules”)¹ by failing to timely file a license renewal application for the Station.

2. On August 17, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of one thousand, five hundred dollars (\$1,500) to Licensee for this violation.² Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on September 27, 2004.

II. BACKGROUND

3. As noted in the NAL, Licensee’s renewal application for the current WUAW(FM) license term was due on August 1, 2003, four months prior to the December 1, 2003, expiration date.³ Licensee did not file the application until October 7, 2003, and provided no explanation for the untimely filing of the renewal application. On August 17, 2004, the staff advised Licensee of its apparent liability for a forfeiture of \$1,500 for willfully and repeatedly violating Section 73.3539 of the Rules, based on the fact that Licensee failed to timely file the WUAW(FM) renewal application.⁴ In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that its failure to timely file the renewal application was unintentional. It explains that an employee of Licensee prepared the application for electronic submission before the August 1, 2003, deadline, but failed to push the “send button.” Licensee claims that this was its first attempt to transmit a renewal electronically, and did not realize that the

¹ 47 C.F.R. § 73.3539.

² *Letter to Ron McLamb from Peter Doyle*, reference 1800B3-SC (MB Aug. 17, 2004).

³ See 47 C.F.R. §§ 73.1020, 73.3539(a).

⁴ The Commission granted the above-referenced license renewal application on August 17, 2004.

application had not been filed until several weeks later. While Licensee does not claim inability to pay, it states that payment of the forfeiture will come at the expense of expenditures necessary to operate the Station. Licensee asserts these reasons warrant a cancellation of the assessed forfeiture.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁸

6. Licensee does not dispute that it failed to file a timely renewal application for the Station, but states that these violations were unintentional. Specifically, Licensee asserts that because of its lack of familiarity with the Commission's electronic filing procedures, it mistakenly believed that its employee had electronically filed the renewal form in a timely fashion. As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.⁹ In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Rules.¹⁰ Moreover, the Commission has long held that "licensees are responsible for the acts and omission of their employees and independent contractors,"¹¹ and has consistently "refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations."¹²

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹⁰ *See Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. *See also Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

¹¹ *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) ("*Eure*"); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972).

¹² *See Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

7. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully¹³ and repeatedly¹⁴ violated Section 73.3539 of the Rules and that no mitigating circumstances warrant cancellation or further reduction of the forfeiture amount.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁵ that WUAW-88.3 FM, SHALL FORFEIT to the United States the sum of \$1,500 for willfully and repeatedly violating Section 73.3539 of the Commission's Rules.

9. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).¹⁶

10. IT IS FURTHER ORDERED, that a copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Ron McLamb, 215 Maynard Lake Road, Erwin, North Carolina, 28339, and by First Class Mail to G. Wayne Robinson, Vice President for Administrative Services, Central Carolina Community College, 1105 Kelly Drive, Sanford, NC 27330.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹³ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *See Southern California*, 6 FCC Rcd at 4387-88.

¹⁴ Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

¹⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹⁶ *See* 47 C.F.R. § 1.1914.